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In the

Supreme Court of the United States

October Term, 1961

No. 833

FREDERICK C. REICHERT,
Petitioner,

vs.

BOROUGH OF SCHUYLKILL HAVEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA as of September Term, 1954, No. 654.

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
CONSTITUTIONAL PROVISION INVOLVED	3
STATEMENT OF THE CASE	3
MANNER OF RAISING FEDERAL QUESTION	5
ARGUMENT	7
APPENDIX A—Opinion Below	11
APPENDIX B—Judgment Below	13
APPENDIX C—Portions of Record Where Federal Question Was Raised	14

CASES CITED

	Page
Coe v. Armour Fertilizer Works, 237 U. S. 413, 424, 59 L. Ed. 1027, 1032	10
L. B. Wilson, Inc., v. Federal Communications Commission, 170 F. 2d 793, 805	8
Londener v. Denver, 210 U. S. 373, 52 L. Ed. 1103	7
Morgan v. United States, 304 U. S. 1, 18, 82 L. Ed. 1129	8
Mullane v. Central Hanover Bank and Trust Co., 339 U. S. 306, 313, 94 L. Ed. 865, 873	7
Railroad Comm. of Cal. v. Pacific Gas & Electric Co., 302 U. S. 388, 393, 82 L. Ed. 319, 322	7
Wetmore v. Carrick, 205 U. S. 141, 51 L. Ed. 745	7

IN THE SUPREME COURT OF THE UNITED STATES

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No. _____

FREDERICK C. REICHERT, *Petitioner*,

vs.

BOROUGH OF SCHUYLKILL HAVEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA, AS OF SEPTEMBER TERM, 1954, No. 654.

Frederick C. Reichert, your petitioner, prays that a Writ of Certiorari issue to review the judgment of the Court of Common Pleas of Schuylkill County, Pennsylvania, entered in the above cause on August 8, 1961.

OPINIONS BELOW

The only opinion rendered in the case is contained in an Order of the Court of Common Pleas of Schuylkill County, Pennsylvania, a copy of which is hereto appended as Appendix A. Said opinion is unreported.

JURISDICTION

The judgment of the Court of Common Pleas of Schuylkill County, Pennsylvania, was entered on August 8, 1961. On the same day, an Appeal was taken to the Supreme Court of Pennsylvania. That Court quashed the Appeal, without opinion, on January 2, 1962. A Petition to Reconsider Order Quashing Appeal and To Reinstate Appeal was denied by the Supreme Court of Pennsylvania on February 6, 1962. Petitioner has no other appellate remedy under the laws of Pennsylvania.

The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1257 (3).

QUESTION PRESENTED

A Judge of a State Court, sitting in Motion Court, granted petitioner a Rule on the respondent to Show Cause why an action brought by respondent against petitioner should not be decreed violative of a prior Stay Order entered by that Court. On the following day, the same judge vacated the Rule to Show Cause, asserting that the petitioner had no legal standing to present his petition and that therefore the Court had no jurisdiction to grant the Rule. Said Order of Vacation put the petitioner completely out of Court, and was entered without notice to the

petitioner, without hearing, and without any opportunity to present argument in support of his legal standing and in support of the Court's jurisdiction.

1. Under the foregoing facts, was the petitioner denied procedural Due Process of Law?

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On April 17, 1961, the Court of Common Pleas of Schuylkill County, Pennsylvania, entered a Stay Order in the case of Borough of Schuylkill Haven v. Bolton, et al., No. 654 September Term, 1954. The Stay Order read as follows:

> "All proceedings in this *and other cases* involving the Schuylkill Haven sewer ordinance in which the same questions of law are involved, to stay in the meanwhile."

Thereafter, the Borough of Schuylkill Haven brought an action before a Justice of the Peace against your petitioner, charging him with a violation of sewer Ordinance No. 321.

Believing that he was entitled to the protection of the above Stay Order entered in the Bolton Case, the petitioner filed a Petition at the same number and term of the Bolton case, reciting the above facts and asking the Court to decree that the Stay Order had been violated by the proceeding brought against him. On August 7, 1961, Judge Harold L. Paul, sitting in Motion Court, granted a Rule to Show Cause why the prayer of the Petition should not be granted.

On the following day, August 8, 1961, Judge Paul entered a further Order vacating the Rule to Show Cause, thus putting the petitioner completely out of court without a hearing.

The Order of Vacation was accompanied by a statement that the judge "had no jurisdiction to grant the Rule to Show Cause" because the petitioner was "not a party defendant" in the Bolton case.

The Order of Vacation was apparently entered at the ex parte request of the respondent, since a judge sitting in Motion Court, after granting a Rule to Show Cause, ordinarily never sees the petition again until the case comes regularly before the full court en banc for argument.

Be that as it may, the Order of Vacation was entered without notice to the petitioner or his counsel, without any hearing, and without giving petitioner any opportunity to present argu-

ment on his standing to file the petition or on the court's jurisdiction to grant the Rule to Show Cause.

Petitioner took an immediate appeal to the Supreme Court of Pennsylvania, but that Court, on January 2, 1962, quashed the appeal without a hearing and without giving any reason for its action. A Petition for Reconsideration and to Reinstate Appeal was presented, and was denied by the Supreme Court of Pennsylvania on February 6, 1962, again without giving any reason for its action.

MANNER OF RAISING FEDERAL QUESTION

Petitioner, having been put out of the Court of Common Pleas without notice and without hearing, had no opportunity to raise the Federal question in that Court.

The Federal question was raised at the earliest opportunity in the Supreme Court of Pennsylvania. In Pennsylvania practice, assignments of error are no longer used, their place being taken by a Statement of Questions Involved printed in the appellant's Brief.

In petitioner's Brief on Appeal to the Supreme Court of Pennsylvania, he raised the Federal question in his first Question Involved, as follows:

"1. It is * * * a denial of due process of law for a judge to vacate a rule to show cause previously granted, where the order of vacation is entered without notice to the petitioner and without affording the petitioner any opportunity to be heard or to present argument?"

The Federal question was further raised in the Supreme Court of Pennsylvania in petitioner's Petition for Reconsideration in the following language:

"13. d. The action of the Court below, in putting the Appellant out of court without notice or opportunity to be heard or to present argument, directly violated Appellant's rights to procedural Due Process of Law under the Fourteenth Amendment to the Constitution of the United States."

A copy of the above portions of the record is hereto appended as Appendix C.

ARGUMENT

The Action Of The Court Below, In Putting Petitioner Out of Court Without Notice or Opportunity to be Heard, Violated the Minimum Requirements of Due Process of Law as Enunciated by the Decisions of This Court.

This Court has repeatedly held that Due Process of Law requires that every litigant be given fair notice and afforded a reasonable opportunity to be heard in an orderly proceeding before the court renders judgment. **WETMORE v. CARRICK**, 205 U. S. 141, 51 L. Ed. 745. This Court has said that the "minimum requirement" of due process is that adjudication must be preceded by notice and opportunity to be heard: **MULLANE v. CENTRAL HANOVER BANK AND TRUST CO.**, 339 U. S. 306, 313, 94 L. Ed. 865, 873. This Court has further said that: "The right to a fair and open hearing is one of the rudiments of fair play assured to every litigant by the Federal Constitution as a minimal requirement." **RAILROAD COMM. OF CAL. v. PACIFIC GAS & ELECTRIC CO.**, 302 U. S. 388, 393, 82 L. Ed. 319, 322.

This Court has further held that the right to be heard before judgment includes the right to present argument on the question of law involved: **LONDENER v. DENVER**, 210 U. S. 373.

52 L. Ed. 1103; **MORGAN v. UNITED STATES**, 304 U. S. 1, 18, 82 L. Ed. 1129.

As was well said in **L. B. WILSON, INC., v. FEDERAL COMMUNICATIONS COMMISSION**, 170 F. 2d 793, 805, citing the **LONDENER** and **MORGAN** cases:

> "The due process guarantee of hearing draws no distinction between questions of law and questions of fact. Due process requires not only opportunity for the presentation of evidence and the cross-examination of witnesses but also the opportunity for argument."

MORGAN v. UNITED STATES, *supra*, also holds that due process includes the right to know the legal contentions of one's adversary, and an opportunity to meet and refute those contentions by argument.

In the present case, the petitioner was deprived of the barest rudiments of due process.

He had no notice of any issue or legal objection raised by his adversary, or of any legal objection raised by the court of its own motion. He had no opportunity to meet those objections by argument. There was no hearing and no opportunity for a hearing before judgment.

The regular and usual course of procedure in the Court of Common Pleas of Schuylkill County was completely disregarded. In that court, the only function of the motion court judge is to grant a rule to show cause. Thereafter, the mo-

tion court judge ordinarily never sees the petition and rule again until the case comes regularly before the court for hearing or argument. If counsel for respondent chose to contest the petition, he was required by the practice of the court to file an answer, in which he might set up any defense or any legal objection concerning the petitioner's legal standing or the jurisdiction of the court. Had that course been followed, the case would then have come regularly before the full court en banc consisting of four judges and all of the legal questions, including petitioner's legal standing and the jurisdiction of the court, would then have been fully argued and decided.

But that course was not followed in the instant case. Instead of filing an answer, counsel for respondent apparently went privately to the motion court judge and induced him to vacate the Rule to Show Cause, thus effectively dismissing the petition and putting the petitioner out of court without notice or opportunity to be heard.

Whatever induced the motion court judge to act as he did, the record clearly shows that the petitioner had no notice of any issue or legal objection raised by his adversary or by the court of its own motion. He had no opportunity to be heard or to present argument on any such issue or question. There was no hearing of any kind. He was simply put summarily out of court without notice of any kind or any opportunity to be heard.

Argument.

Whatever the merits of the petitioner's case might be, he was at least entitled to a hearing before he was put out of court. As this Court held in **COE v. ARMOUR FERTILIZER WORKS**, 237 U. S. 413, 424, 59 L. Ed. 1027, 1032, where a litigant has been given no opportunity for a hearing, it is no answer to say that if due process had been observed he could not have succeeded on the merits.

All that petitioner is asking for now is an opportunity to be heard. He has never had a hearing before the Court of Common Pleas of Schuylkill County. The Supreme Court of Pennsylvania has refused to hear his appeal. Unless this Court vindicates his constitutional right to a hearing, he will never be heard.

Therefore, petitioner respectfully requests that a Writ of Certiorari issue to the Court of Common Pleas of Schuylkill County, Pennsylvania.

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APPENDIX A

OPINION BELOW

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY, PENNA

Borough of Schuylkill Haven,
Plaintiff,
vs.
Oscar R. Bolton and
Lilly Bolton,
Defendants

No. 653
September
Term,
1954

Order of Court

PAUL, J.

On Monday morning, August 7, 1961, in Motion Court, a Petition was presented to the writer to a Rule to Show Cause. The Rule to Show Cause had the same caption as the petition. The writer, when he signed the Rule to Show Cause, did not read the petition. Later in the day when he examined the petition he found that he had no jurisdiction to grant the Rule to Show Cause. The petitioner is neither Oscar R. Bolton or Lilly Bolton, the defendants, in the above case. The petitioner is Frederick C. Reichert. The affidavit to the petition was also taken by Frederick C. Reichert, who is not a party defendant in the above captioned case. The Court therefore had no jurisdiction to grant the Rule to Show Cause.

AND NOW, this 8 day of August, 1961 the Rule to Show Cause in above captioned case signed on August 7, 1961, is hereby vacated.

By the Court.

PAUL, J.

APPENDIX B:

JUDGMENT BELOW

AND NOW, this 8 day of August, 1961, the Rule to Show Cause in the above captioned case signed on August 7, 1961, is hereby vacated.

By the Court,

PAUL J

APPENDIX C.

PORTIONS OF RECORD WHERE FEDERAL QUESTION WAS RAISED.

I.

BRIEF FOR APPELLANT IN SUPREME COURT OF PENNSYLVANIA

STATEMENT OF QUESTIONS INVOLVED

1. Is it a violation of Pa. R. C. P. 211 and a denial of due process of law for a judge to vacate a rule to show cause previously granted, where the order of vacation is entered without notice to the petitioner and without affording the petitioner any opportunity to be heard or to present argument?

II.

PETITION FOR RECONSIDERATION OF ORDER QUASHING APPEAL AND TO REINSTATE APPEAL

13.

(d.) The action of the Court below, in putting the Appellant out of Court without notice or opportunity to be heard or to present argument, directly violated Appellant's rights to procedural Due Process of Law under Article I, Section 9, of the Constitution of Pennsylvania and the Fourteenth Amendment to the Constitution of the United States.